

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100754
	:	TRIAL NOS. B-1003474
Plaintiff-Appellee,	:	B-1005151
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
GREGORY PARRISH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a jury trial, defendant-appellant Gregory Parrish was convicted of one count of rape and one count of sexual battery involving his fifteen-year-old daughter, T.A. The trial court merged the sexual battery and rape for sentencing, and imposed a 10-year term of incarceration. The trial court also classified Parrish as a Tier III sexual offender. This appeal followed, with Parrish raising four assignments of error for our review.

In his first and second assignments of error, Parrish challenges the sufficiency and weight of the evidence adduced to support his convictions. In his third

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

assignment of error, Parrish contends that the trial court erred in overruling his motion for acquittal under Crim.R.29. We consider these assignments together.

A Crim.R.29 motion for a judgment of acquittal challenges the sufficiency of the evidence to prove an offense.² In a challenge to the sufficiency of the evidence, the question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt.³ Conversely, in resolving a challenge to the weight of the evidence, we must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.⁴ A new trial should only be granted only in the exceptional case where the evidence weighs heavily against the conviction.⁵ Ultimately, the “weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact.”⁶

Our review of the record leads us to conclude that the state presented sufficient evidence of the rape and sexual battery offenses. Parrish’s daughter, T.A., testified that she had taken some prescribed medication and had fallen asleep on a mattress in a living room in her father’s apartment. She awoke to discover her underwear down around her ankles and her father pushing his penis into her vagina. She jumped up, grabbed a knife, and threw it at Parrish before running across the hall to a neighbor’s apartment. T.A. called the police, who arrested Parrish. At the police station, Parrish consented to a DNA swab of his penis.

² *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus.

³ *State v. Thompson*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

⁴ See *id.* at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717.

⁵ See *id.*

⁶ *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

In the meantime, T.A. was taken to University Hospital where a sexual assault nurse examiner (SANE) conducted a physical examination. The SANE testified that T.A. had redness and tears in two areas of her vagina. She further explained that because injuries to the vagina heal quickly, the injuries were recent and most likely caused by blunt force trauma. A serologist with the Hamilton County Coroner's Office performed a DNA analysis on the rape kit collected from T.A. at University Hospital and the swab taken from Parrish's penis. The serologist identified T.A.'s DNA on the swab taken from Parrish's penis.

Furthermore, we cannot say the trier of fact clearly lost its way when it found Parrish guilty of the offenses. Although Parrish denied raping or sexually assaulting T.A., the jury was in the best position to judge the credibility of the state's witnesses and Parrish. Based upon our review of the record, we cannot conclude that its judgment was against the manifest weight of the evidence. We, therefore, overrule Parrish's first, second, and third assignments of error.

In his fourth assignment of error, Parrish argues that the trial court erred in imposing an excessive sentence. We disagree.

At the sentencing hearing, the trial court merged the sexual battery and rape offenses and imposed a ten-year prison term, which was the maximum prison term statutorily permitted for the rape offense. In imposing the prison term, the trial court acknowledged that this was a reprehensible case and that Parrish's daughter had suffered greatly as a result of the offense. Based upon our review of the record, we cannot conclude that Parrish's sentence was contrary to law or that the trial court

abused its discretion in imposing the sentence.⁷ As a result, we overrule Parrish's fourth assignment of error, and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 10, 2011

per order of the Court _____.

Presiding Judge

⁷ *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124.